SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1959~~ 1960

No. ~~712~~ 39

JAMES MONROE, ET AL., PETITIONERS,

vs.

FRANK PAPE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 12697

JAMES MONROE, et al., Plaintiffs-Appellants,

v.

FRANK PAPE, et al., Defendants-Appellees.

Appeal From the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius Hoffman, Judge Presiding.

Appendix to Brief of Appellants—Filed August 21, 1959

[File endorsement omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

COMPLAINT—Filed March 2, 1959

Jurisdictional Allegation

Jurisdiction is invoked under 28 U.S.C.A. §§ 1331 and 1343 and 42 U.S.C.A. §§ 1983, 1985 and 1986 and Amendment XIV to the Constitution of the United States.

Count I

James Monroe, plaintiff, by his attorneys, Donald Page [fol. 2] Moore, Ernest Liebman, and Rogers, Rogers, Strayhorn & Harth, complaining of the defendants, Frank Pape, and John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, John Doe #6, John Doe #7, John Doe #8, John Doe #9, John Doe #10, John Doe #11, and John Doe #12 (whose true names are presently unknown) and the City of Chicago, a Municipal Corporation of the State of Illinois, says:

1. This action arises under the Constitution and laws of the United States and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs.

2. During all times herein mentioned, plaintiffs, and each of them, were, and they still are citizens of the United States or other persons within the jurisdiction thereof, and they resided, and now reside, in Chicago, Illinois.

3. During all times mentioned herein, the individual defendants, and each of them, were duly appointed, qualified [fol. 3] and acting police officers of the Police Department of the defendant City of Chicago, a voluntary municipal corporation of the State of Illinois, and were agents of the said City, acting in the course of their employment and engaged in the performance of their duties as police officers of the said City.

4. During all times mentioned herein, the defendants and each of them were assigned to, and acting under the orders of, that subdivision of the said Police Department which is commonly known as the "Detective Bureau."

5. During all times herein mentioned, the defendant Frank Pape was, and he still is, the Deputy Chief of Detectives of the Chicago Police Department and was, and he still is, the second ranking officer in the aforesaid "Detective Bureau" of the Chicago Police Department.

6. During all times herein mentioned the individual defendants and each of them were acting under color of the [fol. 4] statutes, ordinances, regulations, customs and usages of the State of Illinois, of the County of Cook and of the defendant City of Chicago.

7. The defendant City of Chicago is now, and at all times herein mentioned was, the employer of the individual defendants, and each of them. Said City at all times herein mentioned did, and does now, provide the individual defendants, and each of them, with an official badge and identification card, which designates and describes its bearer as an officer of the said City's Department of Police. Said City is the municipal corporation in the name of which the individual defendants, and each of them, performed all acts and omissions alleged herein.

8. During all times herein mentioned, the plaintiff James Monroe was:

(a) The lawful husband of the plaintiff Flossie Monroe;

(b) The father of the plaintiff James Monroe, Jr., a minor;

[fol. 5]. (c) The step-father of the plaintiffs Lawrence Stevens, Ralph Stevens, Robert Stevens, Houston Stevens and Jacqueline Stevens, all of whom are minors.

9. During all times herein mentioned, the plaintiff Flossie Monroe was:

(a) The lawful wife of the plaintiff James Monroe;

(b) The mother of the plaintiffs James Monroe, Jr., Lawrence Stevens, Ralph Stevens, Robert Stevens, Jacqueline Stevens, and Houston Stevens.

10. On or about October 29, 1958, at about 5:45 A.M., the plaintiffs, and each of them, were asleep in their beds in the apartment where they reside as a family, located at 1424 South Trumbull Avenue, Chicago, Illinois. Then and there, the individual defendants, and each of them, broke and entered into the apartment of the plaintiffs through the front and rear doors thereof, and did the following acts, [fol. 6] among others:

(a) Defendants Frank Pape, John Doe #1 and John Doe #2, entered the bedroom of the plaintiffs James Monroe and Flossie Monroe, where the said plaintiffs were asleep together in a bed. The aforesaid defendants then and there shined their flashlights upon the faces of James and Flossie Monroe. One of these three defendants commanded James Monroe to rise from his bed and walk into the living room, and as a result of this command the aforesaid James Monroe was forced to get out of his bed and walk into the living room stark naked and completely without clothing or other means to hide his nakedness. During the course of the aforesaid incident, the defendant Frank Pape, in the presence of Flossie Monroe, cursed James Monroe and threatened to shoot him if he did not obey the commands of the various defendants with alacrity. While James Monroe was thus forced to stand naked in the center of his living room his children and stepchildren, who are the plaintiffs described in Paragraphs 8 (b) and (c) and 9 (b), were [fol. 7] ordered into the aforesaid living room by the remaining defendants and forced to remain there in their night clothes.

(b) While the events stated in Paragraph 10 (a) were taking place, the defendant John Doe #1 was standing in the bedroom of James and Flossie Monroe. After James Monroe was forced at gun point to leave the aforesaid bedroom, the defendant John Doe #1 went to the bedroom closet and seized all the clothing therein and threw each article of clothing upon the floor, after scrutinizing the

said articles separately. Meanwhile, the defendant John Doe #2 ordered the plaintiff Flossie Monroe to rise from her bed and walk into the living room. The plaintiff Flossie Monroe objected to this command and refused to rise from her bed because of the fact that she was completely naked and unclothed as she lay in her bed. Thereupon the defendant John Doe #2 seized the plaintiff Flossie Monroe by the arm and pulled the plaintiff Flossie Monroe from [fol. 8] her bed while Flossie Monroe snatched a blanket with her free hand and attempted to hold the said blanket before her in order to hide her nakedness from the aforesaid defendants. The plaintiff Flossie Monroe was then pushed, shoved and escorted into the living room where she was forced and compelled to stand beside her husband, the plaintiff James Monroe.

(c) At the time that the plaintiff Flossie Monroe was pushed, shoved and escorted into the aforesaid living room, the defendant Frank Pape repeatedly hit, struck, and jabbed a flashlight into the stomach of the plaintiff James Monroe while berating him, questioning him and referring to his race in derogatory terms, such as "nigger" and "black-boy."

(d) During the course of the events described in Paragraph 10 (a), (b) and (c) the defendant John Doe #3 kicked the plaintiff James Monroe, Jr., who is a 4-year old child, and, as a result thereof, the plaintiff James Monroe, Jr. fell to the floor and commenced to cry and wail loudly. [fol. 9] (e) Immediately after the events described in Paragraph 10 (a), (b), (c) and (d), the defendant Frank Pape struck the plaintiff Robert Stevens, knocking him down.

(f) Immediately after the event described in Paragraph 10 (e), the defendant Frank Pape pushed and shoved the plaintiff Houston Stevens in such a manner that the plaintiff Houston Stevens fell across and on top of the plaintiff Robert Stevens.

(g) At approximately the same time that the events described in Paragraph 10 (e) and (f) were taking place, or immediately thereafter, the plaintiff Jacqueline Stevens attempted to leave the aforesaid apartment by way of a

back door in an effort to reach a telephone so that she might call a friend of the family and inform him of the foregoing events. Thereupon, the defendant John Doe #5 blocked the access of the plaintiff Jacqueline Stevens to the aforesaid back door and when Jacqueline Stevens further attempted to make her way past the defendant John [fol. 10] Doe #5, the aforesaid defendant pushed her to the floor and denied her access to the aforesaid back door and the aforesaid telephone.

(h) During the course of, and immediately after, the events described in Paragraph 10, sub-paragraphs (a) through (g), the individual defendants and each of them proceeded to search each and every room of the apartment aforesaid. In the course of this search the defendants emptied all the drawers in the said apartment and dumped the contents of the said drawers upon the floor of the said apartment. Further, the defendants ripped and cut the coverings from various of the mattresses which they found upon the beds in the said apartment and threw the contents of all the closets in the apartment on the floor.

(i) Subsequent to the events related in sub-paragraph (a) through (h), the defendants selected and carried some articles of clothing into the living room and ordered the plaintiff James Monroe to dress himself. Thereupon, two [fol. 11] of the defendants produced a pair of manacles or handcuffs, and with them chained the hands of the plaintiff James Monroe together. Thereupon, the individual defendants, and each of them escorted the plaintiff James Monroe from the aforesaid apartment to an automobile, which was parked in an alley adjoining the building at 1424 South Trumbull Avenue, Chicago, Illinois.

(j) As the defendants were escorting the plaintiff James Monroe to the automobile described in sub-paragraph (i) above, the plaintiff Flossie Monroe asked several of the aforesaid individual defendants where they were taking her husband, James Monroe. The defendant Frank Pape in response to this question, told Flossie Monroe that James Monroe was to be taken to a police station "for questioning."

11. None of the individual defendants, at any of the times mentioned herein, and, more particularly, at the time and place of the events alleged in Paragraph 10 above, had in his possession any warrant issued by any judge, court, or magistrate authorizing:

[fol. 12] (a) A search of the aforesaid apartment; or

(b) The arrest of the plaintiff James Monroe; nor had any warrants in fact been issued by any judge, court or magistrate for the said arrest or search.

12. After the events described in Paragraph 10 (j) four of the individual defendants seated themselves in the automobile described in Paragraph 10 (j). One of these four individual defendants was the defendant Frank Pape. The four individual defendants thereupon proceeded in the aforesaid automobile from the alley adjoining the building at 1424 South Trumbull Avenue to the corner of Roosevelt Road and Homan Avenue, Chicago, Illinois, where the aforesaid automobile was parked and remained parked for approximately thirty minutes, while the plaintiff James Monroe and his captors remained seated therein.

13. At the conclusion of the events described in Paragraph 12, the individual defendants described in Paragraph 12 caused the plaintiff to be carried in the aforesaid auto-
[fol. 13] mobile to the Central Police Headquarters of the Police Department of the defendant City of Chicago which headquarters is located at 1121 South State Street, Chicago, Illinois.

14. Upon his arrival at the aforesaid Central Police Headquarters at or about 6:00 o'clock A.M., the plaintiff James Monroe was placed in a locked and barred jail cell therein and was there imprisoned for approximately ten hours. During the course of this ten-hour period, the plaintiff was from time to time removed from the aforesaid jail cell and placed upon exhibition in a line of other individuals so that various persons could observe him and them. Also, during the aforesaid ten-hour period the plaintiff James Monroe was subjected to intermittent interrogation concerning the alleged murder of an individual named Peter

Saisi, who had been allegedly killed and murdered on October 27, 1958.

15. (a) Throughout the aforesaid ten-hour imprisonment, the plaintiff, James Monroe:

[fol. 14] (1) Was never brought before a judge, court or magistrate;

(2) Was never charged with a crime;

(3) Was never able to make bail or post a bond for his release because no bail had been set in his "case";

(4) Was not permitted to contact his attorney, his family, or his friends, and thereby inform them of his whereabouts, the circumstances of his imprisonment, and thereby also to obtain counsel and advice;

(5) Was not informed of any formal charges which were to be placed against him by the police or by any other person persons;

(6) Was not informed of his privilege against self-incrimination;

(7) Was not informed of his right to the advice of any attorney.

Instead, the plaintiff James Monroe was detained and imprisoned by the defendants and all of them upon the purported justification that he had been arrested and was held [fol. 15] for "investigation," on "open" charges, by which terminology the defendants meant that he was not being held to answer to a charge of a violation of a statute or ordinance, but instead was being held without legal charge for the purpose of being investigated and interrogated and placed upon exhibition for viewing by the various victims of various alleged crimes and by various police officers. This aforesaid imprisonment of the plaintiff James Monroe was committed by the defendants, and all of them, pursuant to the custom and usage hereinafter alleged in Paragraph 17 of this Count.

(b) At the conclusion of the aforesaid ten-hour imprisonment, the plaintiff James Monroe was released from custody

by the defendants. He was not then charged with a crime or violation of ordinance, nor has he ever subsequently been so charged.

16. Throughout some or all of the period of plaintiff's imprisonment by the police, the following branches among others of the Municipal Court of the City of Chicago were [fol. 16] in session in the Central Police Headquarters at 1121 South State Street, Chicago, Illinois:

Branch 27
Branch 40
Branch 41
Branch 42

Throughout some or all of the period of plaintiff's imprisonment by the police, the following additional branches (among others) of the Municipal Court of Chicago were in session in the City of Chicago:

Branch 25
Branch 28
Branch 30
Branch 32
Branch 34
Branch 35
Branch 36
Branch 38
Branch 39
Branch 43
Branch 44
Branch 46
Branch 47
Branch 52
Branch 54
Branch 57

All of the aforesaid branches have jurisdiction to grant police officers leave to file criminal and quasi-criminal complaints against arrested persons and have jurisdiction to [fol. 17] admit arrested persons to bail.

17. At all times herein mentioned, it was, and it is now, the custom or usage of the Police Department of the City

of Chicago to arrest and confine individuals in the police stations and jail cells of the said department for long periods of time on "open" charges. The said confinements on "open" charges are not for the purpose of detaining the arrested individual so that he might be promptly brought to court to answer to a charge of violation of the law, but are for the purpose of investigating and interrogating said individuals for some one or more of the following reasons:

(a) So that the said individuals may be induced, persuaded or coerced into making incriminating statements about themselves or others;

(b) So that the said individuals may be placed on exhibition before police officers and civilians for possible identification as having been the perpetrators of some crime or crimes;

(c) So that the said individuals may be held incommunicado while police officers are investigating and checking upon their character, occupation, associates and activities prior to their arrest;

(d) So that punishment of the said individuals by means of imprisoning them for varying periods of time might be inflicted by officers of the Chicago Police Department without a trial in a court of law.

18. The aforesaid acts of the defendants constituted a violation of the Constitution and laws of the United States of America, in that the plaintiffs, and each of them, were deprived by the defendants, and each of them, of their right to be secure in their home against arbitrary and unreasonable searches and seizures and of their right not to be deprived of their lives, liberties and property, without due process of law, all in violation of Amendment XIV of the United States Constitution and 28 U.S.C.A. § 1343 (3) and [fol. 19] 42 U.S.C.A. § 1983.

19. On January 26, 1959, the following notice of claim for personal injuries was served upon John C. Marcin, City Clerk of the City of Chicago, and John C. Melaniphy, Corporation Counsel of the City of Chicago, * * * (here

follows the text of the formal notice of claim for personal injuries filed on behalf of each of the plaintiffs in this case).

20. As a direct and proximate result of the aforesaid acts of the defendants, and each of them, the plaintiff James Monroe suffered great bodily pain and injury and mental anguish, from then until now and he will continue so to suffer in the future; and he has lost and will in the future lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore plaintiff James Monroe demands judgment against the defendants and each of them, jointly and sev- [fol. 20] erally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action and he further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of One Hundred Thousand Dollars ($100,000.00) plus the costs of this action; and he further demands such other relief as to this court seems just, proper and equitable.

Count II

1-19. Plaintiff James Monroe incorporates and realleges herein Paragraphs 1 to and including Paragraph 19 of Count I of this complaint.

20. Prior to the events alleged in Paragraph 10 of this Count, the individual defendants entered into a conspiracy with each other for the purpose of impeding, hindering, obstructing or defeating the due course of justice of the State of Illinois with intent to deny to the plaintiff James Monroe the equal protection of the laws and with the intent [fol. 21] to injure him for wrongfully enforcing or attempting to enforce his rights to the equal protection of the laws in that the individual defendants planned and agreed to commit all the acts alleged herein under the circumstances alleged herein.

21. In furtherance of the objects of the conspiracy alleged in the preceding paragraph, the defendants did or caused to be done the various overt acts alleged in Paragraphs 1 through and including Paragraph 19 of this Count.

22. The aforesaid acts of the defendants, and each of them, constituted a violation of Amendment XIV of the Constitution of the United States and of 42 U.S.C.A. § 1985 and 28 U.S.C.A. 1343.

23. As a direct and proximate result of the aforesaid acts of the defendants and each of them the plaintiff James Monroe suffered great bodily pain and injury and mental anguish, from then until now and he will continue so to suffer in the future; and he has lost and in the future will [fol. 22] lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore, plaintiff James Monroe demands judgment against the defendants, and each of them, jointly and severally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action, and he further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of One Hundred Thousand Dollars ($100,000.00) plus the costs of this action; and he further demands such other relief as to this court seems just, proper and equitable.

Count III

1-21. Plaintiff James Monroe incorporates and realleges herein Paragraphs 1 through and including Paragraph 19 of Count I of this complaint, and Paragraphs 20 and 21 of Count II of this complaint.

22. Prior to the commission of the wrongs conspired [fol. 23] to be done, as described in Paragraphs 1-21 of this Count, each of the defendants had knowledge of said conspiracy and of the objective thereof, and any one of said defendants had the power by reasonable diligence to prevent or aid in preventing the commission of the said wrongs. Nevertheless, none of the defendants made any effort to prevent or aid in preventing the commission of said wrongs. Therefore, each and every one of the defendants has violated the provisions of 42 U.S.C.A. § 1986.

23. As a direct and proximate result of the foregoing acts and failures to act of the defendants, and each of them,

the plaintiff James Monroe suffered great bodily pain and injury and mental anguish, from then until now and he will continue so to suffer in the future; and he has lost and in the future will lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts and failures [fol. 24] to act of the defendants.

Wherefore, plaintiff James Monroe demands judgment against the defendants, and each of them, jointly and severally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action, and he further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of One Hundred Thousand Dollars ($100,000.00) plus the costs of this action; and he further demands such other relief as to this court seems just, proper and equitable.

Count IV

1-19. Plaintiff Flossie Monroe incorporates and realleges herein Paragraphs 1 to and including Paragraph 19 of Count I of this complaint.

20. As a direct and proximate result of the aforesaid acts of the defendants, and each of them, the plaintiff Flossie Monroe suffered great bodily pain and injury and mental anguish, from then until now and she will continue [fol. 25] so to suffer in the future; and she has lost and will in the future lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore, Plaintiff Flossie Monroe demands judgment against the defendants and each of them, jointly and severally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action and she further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of One Hundred Thousand Dollars ($100,000.00) plus the costs of this action; and she further demands such other relief as to this court seems just, proper and equitable.

Count V

1-19. Plaintiff Flossie Monroe incorporates and realleges herein Paragraphs 1 to and including Paragraph 19 of Count I of this complaint.

[fol. 26] 20. Prior to the event alleged in Paragraph 10 of this Count, the individual defendants entered into a conspiracy with each other for the purpose of impeding, hindering, obstructing or defeating the due course of justice of the State of Illinois with intent to deny to the plaintiff Flossie Monroe the equal protection of the laws and with the intent to injure her for wrongfully enforcing or attempting to enforce her rights to the equal protection of the laws in that the individual defendants planned and agreed to commit all the acts alleged herein under the circumstances alleged herein.

21. In furtherance of the objects of the conspiracy alleged in the preceding paragraph, the defendants did or caused to be done the various overt acts alleged in Paragraphs 1 through and including Paragraph 19 of this Count.

22. The aforesaid acts of the defendants, and each of them, constituted a violation of Amendment XIV of the Constitution of the United States and of 42 U.S.C.A. 1985 [fol. 27] and 28 U.S.C.A. 1343.

23. As a direct and proximate result of the aforesaid acts of the defendants and each of them the plaintiff Flossie Monroe suffered great bodily pain and injury and mental anguish, from then until now and she will continue so to suffer in the future; and she has lost and in the future will lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore, plaintiff Flossie Monroe demands judgment against the defendants, and each of them, jointly and severally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action, and she further demands punitive damages against the defendants and each of them jointly and severally, in the amount of One Hun-

dred Thousand Dollars ($100,000.00) plus the costs of this action; and she further demands such other relief as to this court seems just, proper and equitable.

[fol. 28] Count VI

1-19. Plaintiff Flossie Monroe incorporates and realleges herein Paragraphs 1 through and including Paragraph 19 of Count I of this complaint.

20-21. Plaintiff Flossie Monroe incorporates and realleges herein Paragraphs 20 and 21 of Count V of this complaint.

22. Plaintiff Flossie Monroe incorporates and realleges herein Paragraph 22 of Count III of this complaint.

23. As a direct and proximate result of the foregoing acts and failures to act of the defendants, and each of them, the plaintiff Flossie Monroe suffered great bodily pain and injury and mental anguish, from then until now and she will continue so to suffer in the future; and she has lost and in the future will lose large sums of money by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts and failures to act of the defendants.

[fol. 29] Wherefore, plaintiff Flossie Monroe demands judgment against the defendants, and each of them, jointly and severally, in the amount of Fifty Thousand Dollars ($50,000.00) plus the costs of this action, and she further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of One Hundred Thousand Dollars ($100,000) plus the costs of this action; and she further demands such other relief as to this court seems just, proper and equitable.

Count VII

1-19. Plaintiffs Houston Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens, and James Monroe, Jr. (all of whom are minors and appear here by Flossie Monroe, their mother and next best friend) incorporate and reallege herein Paragraphs 1 through and including Paragraph 19 of Count I of this complaint.

20. As a direct and proximate result of the aforesaid [fol. 30] acts of the defendants, and each of them, the plaintiffs Houston Stevens, Robert Steven Lawrence Stevens, Ralph Stevens, Jacqueline Stevens, and James Monroe, Jr., and each of them, suffered great bodily pain and injury and mental anguish, from then until now and will continue so to suffer in the future; and each of them has been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore, plaintiff Houston Stevens demands judgment against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00) plus the costs of this action and further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00); and further demands such other relief as to this court seems just, proper and equitable.

(Here follow separate prayers for relief on behalf of [fol. 31] Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens and James Monroe, Jr. These prayers for relief contain the identical wording as is contained in the prayer for relief of Houston Stevens, above).

Count VIII

1-19. Plaintiffs Houston Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens, and James Monroe, Jr. (all of whom are minors and appear here by Flossie Monroe, their mother and next best friend) incorporate and reallege herein Paragraphs 1 through and including Paragraph 19 of Count I of this complaint.

20. Prior to the event alleged in Paragraph 10 of this Count, the individual defendants entered into a conspiracy with each other for the purpose of impeding, hindering, obstructing or defeating the due course of justice of the State of Illinois with intent to deny to the plaintiffs Houston Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, [fol. 32] Jacqueline Stevens and James Monroe, Jr. the equal protection of the laws and with the intent to injure them for wrongfully enforcing or attempting to enforce their rights to the equal protection of the laws in that the

individual defendants planned and agreed to commit all the acts alleged herein under the circumstances alleged herein.

21. In furtherance of the objects of the conspiracy alleged in the preceding paragraph, the defendants did or caused to be done the various overt acts alleged in Paragraphs 1 through and including Paragraph 19 of this Count.

22. The aforesaid acts of the defendants, and each of them, constituted a violation of Amendment XIV of the Constitution of the United States and of 42 U.S.C.A. § 1985 and 28 U.S.C.A. 1343.

23. As a direct and proximate result of the aforesaid acts of the defendants, and each of them, the plaintiffs Houston [fol. 33] Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens, and James Monroe, Jr., and each of them, suffered great bodily pain and injury and mental anguish, from then until now and will continue so to suffer in the future; and each of them has been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the defendants.

Wherefore, plaintiff Houston Stevens demands judgment against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00) plus the costs of this action and further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00); and further demands such other relief as to this court seems just, proper and equitable.

(Here follow separate prayers for relief on behalf of Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens and James Monroe, Jr. These prayers for relief contain the identical wording as is contained in the [fol. 34] prayer for relief of Houston Stevens, above).

Count IX

1-19. Plaintiffs Houston Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens, and James Monroe, Jr. (all of whom are minors and appear here by Flossie Monroe, their mother and next best friend)

incorporate and reallege herein Paragraphs 1 through and including Paragraph 19 of Count I of this complaint.

20-21. The above plaintiffs incorporate and reallege herein Paragraphs 20 and 21 of Count VIII of this complaint.

22. The above plaintiffs incorporate and reallege herein Paragraph 22 of Count III of this complaint.

23. As a direct and proximate result of the aforesaid acts and failures to act of the defendants, and each of [fol. 35] them, the plaintiffs Houston Stevens, Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens and James Monroe, Jr., and each of them, suffered great bodily pain and injury and mental anguish; from then until now and will continue so to suffer in the future; and each of them has been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts and failures to act of the defendants.

Wherefore, plaintiff Houston Stevens demands judgment against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00) plus the costs of this action and further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of Fifteen Thousand Dollars ($15,000.00); and further demands such other relief as to this court seems just, proper and equitable.

[fol. 36] (Here follow separate prayers for relief on behalf of Robert Stevens, Lawrence Stevens, Ralph Stevens, Jacqueline Stevens and James Monroe, Jr. These prayers for relief contain the identical wording as is contained in the prayer for relief of Houston Stevens, above).

James Monroe, Flossie Monroe, and Houston Stevens (a minor), Robert Stevens (a minor), Lawrence Stevens (a minor), Ralph Stevens (a minor), Jacqueline Stevens (a minor), and James Monroe, Jr. (a minor), by Flossie Monroe, their mother and next best friend, Plaintiffs, By Donald Page Moore, Ernst Liebman, and Rogers, Rogers, Strayhorn & Harth, their attorneys, 105 West Adams Street, Chicago 3, Illinois, STate 2-1776.

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed March 20, 1959

Now come the defendants, Frank Pape and the City of Chicago, a municipal corporation, by their attorney John C. Melaniphy, Corporation Counsel of the City of Chicago, [fol. 37] and move this Honorable Court to dismiss the complaint of the plaintiffs herein, for lack of jurisdiction over the subject matter or in the alternative for failure to state a claim upon which relief can be granted, for the following reasons:

The defendant, City of Chicago, in operating its Police Department is engaged in the performance of a governmental function and, therefore, is not liable to the plaintiff for the acts of its Police Department employees.

The plaintiffs' Complaint fails to show that the said defendants violated the plaintiffs' Federal Civil Rights, under the Civil Rights Statutes or the Constitution of the United States.

Further, the City of Chicago being a municipal corporation is not liable to the plaintiffs for the alleged violation of their civil rights under the Civil Rights Statutes.

[fol. 38] Frank Pape and City of Chicago, a municipal corporation, Defendants, John C. Melaniphy, Corporation Counsel of City of Chicago, Attorney for Defendants, By Edward R. Hartigan, Assistant Corporation Counsel, James P. Daley.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO DISMISS COMPLAINT AND DENYING LEAVE TO AMEND—June 5, 1959

After careful consideration of the briefs of counsel and the Court being fully advised it is

Ordered that the defendants' motion to dismiss the complaint be and it hereby is allowed and that the complaint be and it hereby is dismissed and it is

Further Ordered that the plaintiffs' motion for leave to file an amended complaint be and it hereby is denied.

[fol. 39]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 5, 1959

Notice is hereby given that the plaintiffs and each of them hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final order dismissing the plaintiffs' complaint entered in the above entitled cause on June 5, 1959.

Dated: June 5, 1959.

Donald Page Moore, One of the Attorneys for the Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 40]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 12697

(Title omitted)

Appellees' Appendix—Filed September 17, 1959

[File endorsement omitted]

[fol. 41]

IN THE UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

No. 59 C 329.

JAMES MONROE, et al., Plaintiffs,

—v.—

FRANK PAPE, et al., Defendants.

Transcript of Proceedings of June 5, 1959

Transcript of Proceedings had at the hearing of the above-entitled cause before the Hon. Julius J. Hoffman, one of the Judges of said Court, sitting in his courtroom in the United States Court House at Chicago, Illinois on Friday, June 5, 1959, at 10:00 o'clock a. m.

The Clerk: 59 C 329, James Monroe *vs.* Frank Pape, et al., Decision on Defendant's Motion to Dismiss Complaint.

[fol. 42]

MEMORANDUM OPINION ON MOTION TO DISMISS COMPLAINT—June 5, 1959

The Court: I had you come in here, gentlemen, because I thought I ought to give you some reasons for deciding this motion which is important.

This action, as we know, is based upon the Civil Rights Act, 42 U. S. C., Sections 1983, 1985 and 1986, and the Fourteenth Amendment of the United States Constitution.

The plaintiffs are James Monroe and Flossie Monroe, husband and wife, and six children represented by their mother, Flossie Monroe, as next friend.

The defendants are Frank Pape of the City of Chicago Police Department, twelve unknown police officers designated as John Doe No. 1 to and including No. 12, and the City of Chicago.

Count 1 of the complaint charges that on or about October 29, 1958, at about 5:45 a. m., while the plaintiffs were

asleep in their bed, the defendants broke into the plaintiffs' apartment from both the front and the rear doors and according to the complaint the following events occurred:

Frank Pape and John Doe No. 1 and 2 entered the bedroom of James and Flossie Monroe, flashed their—shall we call them flashlights?

Mr. Moore: Yes, your Honor.

The Court: —upon them and pointed pistols at them and commanded James Monroe to walk into the living room while he was naked.

At this time Frank Pape allegedly cursed James Monroe and threatened to shoot him if he did not obey the various commands of the defendant. Thereupon James Monroe was forced to stand naked in his living room and his children and step-children, also plaintiffs in this case, were ordered into the living room and forced to remain in their night clothes.

During the time of these alleged occurrences, the defendant John Doe No. 1 went into the bedroom closet, seized the clothing in the closet and threw each article on [fol. 43] the floor. At the same time John Doe No. 2 ordered Flossie Monroe from her bed while she was naked, but according to the complaint she was able to snatch a blanket to cover her nakedness. She was then pushed and escorted into the living room and forced to stand beside her husband James Monroe.

The complaint goes on to allege that while Flossie Monroe was being pushed into the living room, the defendant Frank Pape repeatedly hit and struck James Monroe and jabbed a flashlight into his stomach and referred to him as a "nigger" and "black boy."

Count 1 also alleges that the defendant John Doe No. 3 kicked the plaintiff James Monroe, Jr., a four year old child, and caused him to fall to the floor crying. Then Frank Pape struck the plaintiff Robert Stevens and knocked him down. The complaint goes on to allege that Frank Pape pushed and shoved the plaintiff Houston Stevens so that he fell across Robert Stevens. When Frank Pape struck Robert Stevens and pushed Houston Stevens, the plaintiff Jacqueline Stevens attempted to leave the apartment by the back door in order to reach a telephone.

and John Doe No. 5 blocked her access to the back door and pushed her to the floor.

Count 1 further alleges that the defendants searched each and every room of the apartment, emptied all the drawers in the apartment and dumped their contents on the floor. The defendants also ripped and cut mattress coverings of the beds and threw the contents of all closets on the floor. Thereafter the defendants provided James Monroe with clothing, handcuffed him and escorted him to a parked automobile. The defendants told Flossie Monroe that James Monroe was being taken to a police station for questioning.

Count 1 alleges that these acts were committed by the individual defendants, none of whom had a warrant for the [fol. 44] search of the apartment or a warrant for the arrest of James Monroe.

Count 1 also alleges that after James Monroe was escorted to the automobile, four defendants, including Frank Pape, drove the plaintiff to the corner of Roosevelt Road and Homan Avenue in Chicago and parked the automobile, and it remained there for approximately 30 minutes. These defendants then transported James Monroe to the Central Police Headquarters of the Chicago Police Department.

After his arrival at the Central Headquarters at or about 6:00 o'clock in the morning, James Monroe was imprisoned approximately ten hours and was from time to time placed upon exhibition in a so-called "line-up".

In addition, Count 1 alleges that during the incarceration, James Monroe was subjected to intermittent interrogation concerning the alleged murder of one Peter Saisi.

The complaint asserts that during the incarceration, James Monroe was never brought before a judge, court or magistrate; was never charged with a crime; was never allowed to make bail or post bond; was not permitted to contact his attorney, friends or family; was not informed of any formal charges placed against him; was not informed of his privilege against self-incrimination, and was not informed of his right to counsel.

At the conclusion of the 10 hour period of incarceration, James Monroe was released from custody by the defendants without having been charged with any crime.

Count 2 of the complaint alleges that prior to the acts alleged in Count 1, the individual defendants entered into a conspiracy with each other for the purpose of defeating the due course of justice and to deny James Monroe the equal protection of the law.

Count 2 asserts that the individual defendants deprived James Monroe of his civil and constitutional rights and violated Section 1985 of the Civil Rights Act by conspiring to commit the acts alleged in Count 1 of the complaint. [fol. 45] Count 3 alleges that the defendants had knowledge of the conspiracy alleged in Count 2 and the power to prevent the conspiracy but failed to do so. This failure is asserted to be a violation of Section 1986 of the Civil Rights Act.

In Count 4 of the complaint, the plaintiff Flossie Monroe seeks damages for the same acts alleged by James Monroe in Count 1 which were committed against her by the defendants.

She alleges in Count 5 that the defendants violated Section 1985 of the Civil Rights Act when they committed the conspiracy alleged by James Monroe in Count 2.

In Count 6 she alleges that the defendants had knowledge of the conspiracy and failed to prevent its commission and therefore violated Section 1986 of the Civil Rights Act.

In Counts 7, 8 and 9, respectively, the minor plaintiffs, Houston Stevens, Robert Stevens, Lawrence Stevens, Jacqueline Stevens and James Monroe, Jr., allege that the defendants committed the same acts alleged by James Monroe in Count 1, the same conspiracy alleged by James Monroe in Count 2, and the same failure of defendants to prevent the conspiracy alleged by James Monroe in Count 3.

The defendants Frank Pape and the City of Chicago have moved to dismiss the complaint because it fails to state a claim upon which relief may be granted.

Now as to Frank Pape, there are eight plaintiffs in this action, each of whom has alleged a claim for relief based upon the same facts alleged by James Monroe in Count 1 of the complaint. Therefore, I shall not treat each plaintiff separately since the factual allegations are lengthy. I shall

characterize or describe the acts of the defendants in the same manner in which the plaintiff has characterized them.

Dealing with the subject of search and seizure, Count 1 of the complaint alleges that the defendants Pape and the John Doe police officers broke and entered into the plain-[fol. 46] tiff's family apartment at 5:45 a. m. on October 29, 1958; that the defendants had no search warrant and that the search was arbitrary and unreasonable. The plaintiffs contend that this search and seizure is a violation of 42 United States Code, Section 1983.

The defendant argues that the plaintiffs have failed to allege that any evidence which might be used against the plaintiff was obtained by the illegal search and that therefore 42 U. S. C., Section 1983, was not violated.

The Supreme Court has recently said that "the security of one's privacy against arbitrary intrusion by the police is fundamental to a free society and as such protected by the Fourteenth Amendment." *Frank* v. *Maryland* decided by the Supreme Court on May 4, 1959; *Wolf* v. *Colorado*, 338 U. S. 25, at 27, decided in 1948.

Although the Fourteenth Amendment prohibits unreasonable searches by state officers, there is a limitation as to how far the federal government can and should go in supervising activities of state and local law enforcement agencies. See *Wolf* v. *Colorado* to which I have previously referred; an article by Allen on the *Wolf* Case, Search and Seizure, Federalism and the Civil Liberties, 45 Ill. Law Review 1, written and published in 1950.

This reasoned limitation was applied in *Mackey* v. *Chandler*, 152 Fed. Supp. 579, Western District of South Carolina, 1957. The *Mackey* case held that the Civil Rights Act did not provide a cause of action against state officers who unreasonably searched an individual's home. The Court stated:

> "The exemption from unreasonable searches and seizures is not one of the privileges and immunities of the citizens of the United States which the Fourteenth Amendment forbids the state to abridge, nor is it an element of due process of law guaranteed by the latter

amendment against state action." That at page 582 of that opinion.

[fol. 47] The Court in the *Mackey* case relied heavily upon the case of *Jennings* v. *Nester*, 217 F. 2d 153 decided by our Circuit in 1954 which involved an allegation of unlawful search of the person. Although the Court in the *Jennings* case did not deal expressly with this allegation, the Court held that the complaint did not state a claim for relief under the Civil Rights Act. In reaching this conclusion, the Court asserted that the Civil Rights Act was not designed to discipline state police officers and that the common law provides adequate actions for damages against errant police officers.

Although the *Mackey* case has been criticized, see Comment, Civil Rights Act Section 1983 and Illegal Search by State Officers, 10 Stanford Law Review 335 published in 1958, and the actions of the defendants, if true, may not be as we would like our police officers to behave,—and I don't know whether they are true or not—the search of the plaintiffs' apartment without a search warrant is not a violation of the Civil Rights Act, Section 1983. The only two cases which have been presented with this issue have concurred in that result. *Jennings* v. *Nester*, to which I have previously alluded, and the *Mackey* case, also referred to.

Now as to the brutality, alleged brutality, Count 1 of the complaint alleges that Frank Pape committed batteries on James Monroe, Robert Stevens and Houston Stevens. In addition, Count 1 alleges that batteries were committed in Pape's presence by his fellow officers upon Flossie Monroe, Jacqueline Stevens and James Monroe, Jr. The plaintiffs argue that an intentional assault by an individual acting under state authority is a violation of the Civil Rights Act.

The defendant argues that an assault does not violate an individual's civil rights. The defendant is correct in this contention. An assault, without more, does not constitute a violation of the Civil Rights Act. *Screws* v. *United States*, [fol. 48] 325 U. S. 91. In that case decided in 1945, the Court stated:

"The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected by or secured by the Constitution or laws of the United States." That from page 108 of that opinion.

In *Miles* v. *Armstrong*, 207 F. 2d 284, decided by our circuit in 1953, it was held that an aggravated assault did not violate the privileges and immunities clause of the Fourteenth Amendment. The Court in that case at page 187 said:

"The injuries he asserts he has suffered are, in essence, an aggravated assault upon his person and wanton destruction of his property—grievous injuries surely. But they do not constitute privileges and immunities incident to United States citizenship; they are rather such that the perpetrators are punishable under state law where reparation may be obtained."

Accord: *United States ex rel. Atterbury* v. *Ragen*, 237 F. 2d 953, again decided by our circuit in 1956; *Knight* v. *Bibb*, 250 F. 2d 283, decided by the Seventh Circuit in 1957.

It is true that the *Miles* case was concerned with Section 1985 rather than Section 1983 upon which the plaintiffs rely in the case at bar, and it is equally true that Section 1983 is broader than Section 1985 in that 1983 embraces violations of due process and such violations are not embraced by 1985. However, I have been unable to find any case which holds that an assault unaccompanied by other circumstances perpetrated by state officers constitutes a violation of due process rights.

There is nothing more than an allegation of assault and battery stated by the plaintiffs in the case at bar. There is no allegation that the assault and battery on any of the plaintiffs was designed to elicit "information and/or con- [fol. 49] fessions." See *Geach* v. *Moynahan*, 207 F. 2d 714, Seventh Circuit, 1953.

I am of the opinion, therefore, that the brutality allegations of the plaintiff's complaint do not state a claim upon which relief may be granted under the Civil Rights Act.

Now as to the so-called incommunicado detention. Count 1 alleges among other things that James Monroe was arrested without a warrant and held for 10 hours for interrogation and was exhibited in police line-ups. In addition Count 1 alleges that James Monroe was never charged with any crime and was denied the right to bail and the advice of counsel.

The plaintiff James Monroe argues that such incommunicado detention was a denial of due process of law in violation of the Civil Rights Act.

The defendant asserts that false arrest and false imprisonment are not violations of the Civil Rights Act.

In the recent case of *Stitt* v. *Lynch* decided by the Seventh Circuit on May 11, 1959, not yet in the books, an action was brought under the Civil Rights Act against a sheriff and his deputy for false arrest, for false imprisonment, and the alleged failure to charge the plaintiffs therein with a crime until after the expiration of about two hours. The Court held that such acts did not violate the Civil Rights Act. Accord: *Iglesias* v. *Gulfstream Park Racing Association, Inc.*, 201 F. 2d 817 decided by the Fifth Circuit in 1953; *Dinneen* v. *Williams*, 219 F. 2d 428, decided by the Ninth Circuit in 1955.

We come now to a discussion of the conspiracy allegation. In addition to the charge that the defendants violated Section 1983 of the Civil Rights Act, the complaint asserts that a conspiracy existed between the defendants pursuant to which they illegally searched the plaintiff's apartment, assaulted various plaintiffs, seized James Monroe and imprisoned him for ten hours. The plaintiffs as- [fol. 50] sert that this conspiracy was a deprivation of equal protection and in violation of Section 1985.

The defendant contends that the complaint fails to allege wherein the plaintiff was deprived of equal protection.

It must be pointed out that Section 1983 of the Civil Rights Act provides a claim for relief for a deprivation of due process, and Section 1985 provides relief for deprivation of equal protection.

Section 1983 does not mention conspiracy but Section 1985 does; therefore, the Civil Rights Act provides a claim,

for conspiracy to deny equal protection but not for a conspiracy to deny due process. See *Jennings* v. *Nester*, to which I have previously alluded; *Ortega* v. *Ragen*, 216 F. 2d 561, a case which I had something to do with in the trial court; *Mitchell* v. *Greenough*, 100 F. 2d 184, decided by the Ninth Circuit in 1938.

The conclusory allegations of the complaint do not embody a claim for relief. Indeed, it has been held that where the complaint characterizes the acts of the defendants as malicious, conspiratorial and done for the purpose of depriving plaintiffs of their constitutional rights, such allegations must be disregarded on a motion to dismiss. *McGuire* v. *Todd*, 198 F. 2d 60, decided by the Fifth Circuit in 1952; *Dunn* v. *Gazzola*, 216 F. 2d 709, a First Circuit case decided in 1954, and the *Ortega* case to which I have previously referred.

In the case at bar, the plaintiffs have made no factual allegations which support the assertion that the plaintiffs were denied equal protection of the law. As the Court stated in the *Jennings* v. *Nester* case at page 154:

> "The complaint clearly does not state a cause of action for a denial of equal protection. Although it alleges improper acts on the part of the defendants, there is nothing to indicate that every citizen of Illinois is not potentially subject to the same treatment."

[fol. 51] The plaintiffs rely upon the case of *Wakat* v. *Harlib*, 253 F. 2d 59, decided by our circuit in 1958, in support of their contention that the defendants violated Section 1985.

Although the *Wakat* case contains language which indicates that Section 1985 may be violated when state officers discriminate against an individual rather than a class, the language has been held to be unnecessary and dicta. *Stiff* v. *Lynch* to which I have previously referred.

In the *Wakat* case the plaintiff was described as a well known criminal and as such was denied equal protection by a police regulation having the force of law. Since the plaintiffs in the case at bar have not alleged that they

were treated in a manner by the defendants which differs from the treatment others may suffer, they have not stated a claim upon which relief may be granted under Section 1985.

Now as to the alleged failure to prevent conspiracy, the plaintiffs allege that Pape and the John Doe police officers failed to prevent the alleged conspiracy which violated Section 1985 of the Civil Rights Act, and therefore violated Section 1986 of the Civil Rights Act.

Section 1986 provides in pertinent part that:

> "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this title, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action."

The plaintiffs assert that if the conspiracy allegations state a claim for relief under Section 1985, the allegations [fol. 52] with respect to the failure to prevent the conspiracy also state a claim for relief.

Since the conspiracy allegations do not state a claim upon which relief may be granted, the allegations of failure to prevent a conspiracy are similarly defective.

Now as to the City of Chicago, the defendant City of Chicago bases its motion to dismiss upon the ground that a municipal corporation is not liable for the wrongful acts of its police and that this immunity extends to a Civil Rights Act.

The plaintiffs argue, inter alia, that Congress did not intend that the Civil Rights Act should include municipal immunity; that the word "person" as used in the Civil Rights Act was intended to include a municipal corporation as well as any other person; that the need for uni-

formity throughout the various states dictates that municipal corporations be held liable under the Civil Rights Act; and that in some cases relief has been granted against municipal corporations in actions under the Civil Rights Act.

Although it has been held that municipal corporations are not liable under the Civil Rights Act, *Agnew* v. *City of Compton*, 239 F. 2d 226, decided by the Ninth Circuit in 1956; *Charlton* v. *City of Hialeah*, 188 F. 2d 421, decided by the Fifth Circuit in 1951, this immunity for the municipality has been drawn from the common law of the state in which the action arose.

In Illinois, the recent decision of *Molitor* v. *Kaneland Community Unit District 302*, Law Week 27-2609, June 2, 1959, strongly indicates that the doctrine of municipal immunity has been abandoned.

The *Molitor* case involved an action by a pupil against a school district for injuries sustained by the pupil while riding in a school bus. The Supreme Court of Illinois decided that although a school district had heretofore been [fol. 53] protected from liability for the negligent acts of its agents, the doctrine of immunity which gave such a protection was no longer sound or just under modern conditions.

It should be noted that the *Molitor* case did not involve a municipal corporation.

In the case at bar, it is unnecessary to apply or interpret the *Molitor* decision since the liability of the City of Chicago is based upon the doctrine of *respondeat superior*, and since I have already held that the complaint fails to state a claim for relief against the agents of the city, there is no claim for relief against the city itself.

Since the plaintiffs have not alleged any facts which support their conclusory allegations that the defendants violated the Civil Rights Act, the defendants' motion to dismiss, Mr. Clark, will be allowed, and the complaint will be dismissed.

Mr. Moore: If the Court please, may we have leave to file an amended complaint?

The Court: No, I think I will let that order stand. I went into this very thoroughly. You have got a big, long

complaint and we spent a lot of time on it, and I don't—moreover, counsel for the defendant has gone.

I will let my order stand as it is.

Mr. Moore: Thank you, your Honor.

[fol. 54] Reporters Certificate to foregoing transcript (omitted in printing).

[fol. 55] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 56]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12697

September Term and Session, 1959

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JAMES MONROE et al., Plaintiffs-Appellants,

—v.—

FRANK PAPE et al., Defendants-Appellees.

OPINION—November 23, 1959

Before: HASTINGS, *Chief Judge*, KNOCH and CASTLE, *Circuit Judges*.

HASTINGS, *Chief Judge*:

This action was brought in the district court under the Federal Civil Rights Act, 42 U.S.C.A. §§ 1983, 1985 and 1986, to recover damages for the alleged misconduct of the defendant Chicago, Illinois police officers. Such misconduct was claimed to be in violation of the rights of plaintiffs under the Fourteent.. Amendment to the Constitution of the United States. The City of Chicago, Illinois was joined as a

defendant, liability being predicated on the doctrine of *respondeat superior*. The trial court entered an order dismissing the complaint on defendants' motion on the ground that the complaint failed to state a cause of action under the Act, then denied leave to amend; this appeal followed.

The plaintiffs are James Monroe and Flossie Monroe, husband and wife, and their six children represented by their mother, Flossie Monroe, as next friend. The defendants are Frank Pape, Deputy Chief of Detectives [fol. 57] of the Chicago Police Department, and twelve unknown police officers assigned to the Detective Bureau designated as John Doe No. 1 to and including No. 12, and the City of Chicago, Illinois. The complaint contains nine counts.

Counts charging violation of 42 U.S.C.A. § 1983 are Counts I, IV and VII. Count I contains the basic factual allegations constituting plaintiffs' cause of action and seeks recovery of damages for James Monroe. Count IV incorporates the facts alleged in Count I and seeks recovery for Flossie Monroe, as does Count VII on behalf of the six Monroe children.

Counts charging violation of 42 U.S.C.A. § 1985 are Counts II, V and VIII, charging a conspiracy of defendants to commit the acts alleged in Count I, again praying damages for James Monroe, Flossie Monroe and the six Monroe children, respectively.

Counts charging violation of 42 U.S.C.A. § 1986 are Counts III, VI and IX, charging failure of each of the defendants to make any effort to prevent the accomplishment of the above conspiracy and seeking recovery for James Monroe, Flossie Monroe and the six Monroe children, respectively.

The complaint alleges an unreasonable search and seizure, a series of unjustified batteries and a long, inherently coercive and unjustifiably secret detention committed against plaintiffs by defendants acting under color of law. Since this matter is before us on the ruling granting the motion to dismiss, we are required to treat the allegations of gross misconduct as true for the purpose of review; and they need not be detailed in this opinion. Plaintiffs claim these acts violated their *due*

process rights under the Fourteenth Amendment and give rise to a proper cause of action under Section 1983 of the Act. They further contend that a conspiracy to commit these acts violated their rights to *equal protection of the law* and furnish a proper basis for recovery under Section 1985. By the same reasoning they contend that the allegations charging a failure to prevent the conspiracy sustain their right to recover under Section 1986.

The ultimate issue before us is whether the alleged misconduct on the part of *city police officers* of a state municipality makes a sufficient showing of a violation of the Federal Civil Rights Act.

[fol. 58] This question is not new to this court and has been resolved adversely to plaintiffs' contentions. The most recent decision is that of *Stift* v. *Lynch*, 7 Cir., 267 F. 2d 237 (May 11, 1959). In *Stift*, recovery was sought under the same three sections of the Act as in the instant case. Named as defendants were a sheriff and deputy sheriff, in addition to a Justice of the Peace and the State's Attorney and his assistant. The dismissal of the complaint as to all defendants was affirmed. In sustaining the dismissal as to the sheriff and his deputy, the court said,

> "Under our decisions in *Eaton* v. *Bibb*, 7 Cir., 217 F. 2d 446, *Miles* v. *Armstrong*, 7 Cir., 207 F. 2d 284 and *United States ex rel. Atterbury* v. *Ragen*, 7 Cir., 237 F. 2d 953, we hold the complaint herein did not state a claim under the Federal Civil Rights Act upon which relief could be granted against defendants Lynch and Eichholz." (*Id.* at 240)

Stift distinguishes *Wakat* v. *Harlib*, 7 Cir., 253 F. 2d 59 (1958). See also, *Jennings* v. *Nester*, 7 Cir., 207 F. 2d 153 (1955).

We do not condone the alleged misconduct of defendants, if true, but that is not the question before us. Under the holding in *Stift* v. *Lynch, supra*, and the other decisions of this circuit referred to therein, some of which are cited above, affirmance of the dismissal before us necessarily follows. Plaintiffs are not without their remedy in the state court.

In view of such a determination there is no claim for relief against the City of Chicago.

The order dismissing the complaint is

AFFIRMED.

[fol. 59]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12697

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JAMES MONROE, et al., Plaintiffs-Appellants,

—v.—

FRANK PAPE, et al., Defendants-Appellees.

JUDGMENT—November 23, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the Opinion of this Court filed this day.

[fol. 60] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 61]

SUPREME COURT OF THE UNITED STATES

No. 712—October Term, 1959

JAMES MONROE, et al., Petitioners,

—v.—

FRANK PAPE, et al.

ORDER ALLOWING CERTIORARI—March 28, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.